

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Billed Party Preference for)
InterLATA 0+ Calls)

CC Docket No. 92-77

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To: The Commission

JOINT REPLY COMMENTS OF THE INTELICALL COMPANIES AND
NETWORK OPERATOR SERVICES, INC.

THE INTELICALL COMPANIES and
NETWORK OPERATOR SERVICES,
INC.

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SUMMARY

The record in this proceeding overwhelmingly demonstrates that the Commission should terminate any further consideration of billed party preference. Commenters representing a cross-section of the industry agree with the Commission that the costs of BPP implementation far outweigh any anticipated benefits therefrom.

The record also demonstrates that establishing a benchmark that is intrinsically tied to the AT&T, MCI and Sprint rates is both unlawful and bad public policy. In the first instance, it is unlawful for the Commission to set rates, or take actions which are the equivalent of setting rates, based on "consumer expectations." Rather, the record demonstrates that, to the extent a rate benchmark is necessary, such a benchmark must be set, taking into consideration the unique cost structures of each OSP. The rate ceilings proposed by the Coalition in March 1995 allow OSPs to cover their reasonable costs. Moreover, these rate ceilings more accurately reflect consumer expectations, assuming arguendo that "consumer expectations" is a measure appropriate for the Commission to use in rate making.

The record also shows that the Commission's exact rate disclosure requirement is technically infeasible, costly, and otherwise disruptive. As the Intellicall Companies explained in their Comments, exact rate disclosure requirements would necessitate costly replacements of embedded equipment, redesign of equipment generally, the development of costly software,

maintenance of complex rate tables, and otherwise impose incalculable loss and expenses upon smaller OSPs. Per-call, exact rate disclosures are technically infeasible, and operationally unmanageable. The Commission should, instead, encourage continued consumer education which will ultimately eradicate any residual rate concerns.

To the extent the Commission feels compelled to require some type of additional per-call rate disclosure, the record indicates there are less costly alternatives, such as general rate announcements. The Commission must, however, permit OSPs to choose the solution, or a combination of solutions, that fits their needs, as several commenters suggest.

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TO: The Commission

**JOINT REPLY COMMENTS OF THE INTELICALL COMPANIES AND NETWORK
OPERATOR SERVICES, INC.**

Intellicall, Inc. and Intellicall Operator Services, Inc. (the "Intellicall Companies"), in conjunction with Network Operator Services, Inc. ("NOSI") (collectively, the "Companies"), by and through their undersigned counsel, hereby submit their joint reply comments¹ in response to the Federal Communications

¹ Network Operator Services, Inc. ("NOSI") is a provider of operator services to companies who, in turn, are certificated to provide operator services at both the federal and state levels. NOSI also provides operator services directly to callers at transient locations, including locations which generate large volumes of calling card calls. Although NOSI did not submit initial comments in this proceeding, NOSI fully adopts and supports the Intellicall Companies' arguments and suggestions set forth in their initial comments.

Commission's (the "Commission") Second Further Notice of Proposed Rulemaking ("Second NPRM") in CC Docket No. 92-77.²

I. INTRODUCTION AND BACKGROUND

In response to the Commission's Second NPRM in this proceeding, the Intellicall Companies challenged the Commission's proposed benchmark and the proposed requirement that operator services providers whose charges exceed the benchmark automatically disclose their exact rates before connecting a call. Specifically, the Intellicall Companies demonstrated that the proposed rate benchmark was unreasonably low. Should the Commission set a benchmark, it should be high enough to include all reasonable rates below it, such as that proposed by the Coalition. Moreover, the Intellicall Companies demonstrated that the proposed mandatory exact rate disclosure on all operator services calls that exceed the benchmark could not be implemented from pay telephones using store-and-forward technology. The present design and architecture of store-and-forward payphones is incompatible with the Commission's proposal. In the event the Commission should impose some type of additional disclosure requirements, the Intellicall Companies submitted that the Commission's average- and maximum-rate-based disclosure proposals would be more practical and less costly to implement than the

² *In the Matter of Billed Party Preference for InterLATA 0+ Calls, Second Further Notice of Proposed Rulemaking (rel. June 6, 1996) ("SNPRM").*

proposed exact rate disclosure requirement. Moreover, the Intellicall Companies proposed three other alternatives which, either individually or in combination with the Commission's proposed alternatives, would adequately address the Commission's consumer protection objectives.

The comments submitted by various industry participants in this proceeding concur with the Intellicall Companies that the Commission's rate benchmark and rate disclosure proposals are problematic, at best. These commenters persuasively argue, as do the Intellicall Companies and NOSI, against a rate benchmark that is intrinsically tied to AT&T's, MCI's, and Sprint's (collectively, the "Big Three") operator services rates.³ Similarly, many commenters find fault with the Commission's exact rate disclosure requirement as being either technically impossible or ludicrously expensive to implement.⁴ These comments echo the Intellicall Companies' and NOSI's beliefs.

Finally, the commenters overwhelmingly agree that billed party preference ("BPP") is no longer a viable or

³ See, e.g., Comments of AT&T (benchmark should be based on a statistical sampling of the rates of all OSPs); Joint Comments of Bell Atlantic, BellSouth, and Nynex (benchmark should not be based on the prices charged by the Big Three).

⁴ See, e.g., Comments of MCI (specific rate disclosures significantly increase burden on OSPs); Comments of APCC (OSP's must invest in the necessary modifications of equipment and facilities to deliver the price disclosure message; equipment modification presents special problems for store-and-forward phones).

practical solution to any residual operator services problems.⁵ The Intellicall Companies and NOSI support this conclusion and urge the Commission to terminate any further consideration of BPP consistent with industry consensus.

II. ARGUMENTS

A. THE COMMISSION SHOULD ADOPT THE COALITION'S PROPOSED BENCHMARKS SHOULD IT CHOOSE TO RELY ON THAT MEANS OF RATE REGULATION.

The Intellicall Companies and NOSI disagree with the Commission's apparent conclusion that it should set benchmarks based on what it believes are "consumer expectations." Such a conclusion runs counter to basic economic tenets and would, if carried to the next logical step, lead to absurd results since the provider's true costs will never come into play. Operator services rates or rate caps should not be set by the Commission based solely, or even primarily on consumer expectations.

Clearly, consumer expectations play a role in the carrier's setting of its own rates. All carriers, not just OSPs, have to take into account the willingness of people to pay the rates charged for their services. If the rates are too high, people will choose to seek an alternative provider. But the carrier also must take into account its costs, market conditions,

⁵ See, e.g., Comments of CompTel (time for BPP has long since passed); Comments of APCC (Commission should definitively terminate its consideration of BPP).

investor expectations and the like, all things the Commission is not equipped or prepared to do, in the context of this proceeding, with the same level of scrutiny and analysis the carriers must dedicate, as their rates are an ultimate determination of the success or failure of their particular business.

1. **A Benchmark that is Defined in Terms of the "Big Three" Operator Services Rates is not an Accurate Measurement of Consumer Expectations.**

To the extent consumer expectations bear any relationship to what rates, or rate cap, ought to be (i.e., rates under the cap are not presumed to be unreasonable), consumer expectations must be measured based on realistic assumptions and verifiable representative data--not on the bare conclusion that the dominant carrier rates are reflective of "reasonable expectations of consumers."⁶ Clearly, this absurd result would be untenable. Would a 500% rate increase initiated by the Big Three still comport with consumer expectations regardless of the underlying costs? Under the Commission's approach, it would. This makes sense only to the extent all fast food restaurants can be forced to price their hamburger sandwiches at the composite prices charged by McDonalds, Roy Rogers, and Burger King for a hypothetical Big Mac. Applied in the fast food context, the Commission's theory would dictate that since the largest percentage of hamburger sandwiches sold in the United States come

⁶ SNPRM, at 14 ¶ 23.

from McDonalds, Burger King, and Roy Rogers, it must be that the consumers are only willing to pay \$1.00 for a hamburger sandwich.

The Intellicall Companies and NOSI strongly disagree with Sprint's recommendation of the Commission's benchmark, the only member of the Big Three who appears to espouse the Commission's proposal.⁷ Other than the obvious fact that it will be the beneficiary of the Commission's proposed benchmark, Sprint has not provided any justification as to why its rates ought to be the standard by which all other OSP rates are measured.

Sprint suggests further that the benchmark be revised quarterly as opposed to annually. With respect to the suggested quarterly revision of the rate benchmark, again only the Big Three stand to benefit from that requirement. Sprint's suggestion would make it easier for Sprint to increase and decrease its rates with more frequency, to the detriment of the smaller OSPs who will have to keep track of, and align themselves with, Sprint's fluctuating rates. This would create further administrative nightmares as the OSPs would have to update their tables and indices with more frequency, not to mention it would multiply the costs of compliance and implementation.

⁷ See Comments of Sprint. MCI did not address the benchmark issue in its Comments, but did indicate that additional rate disclosures are unnecessary. AT&T (the major beneficiary of the rate benchmark as the "dominant" IXC), on the other hand, explicitly challenged benchmark rates that do not represent the universe of rates charged by all OSPs.

2. **The Coalition's Proposed Benchmarks
are a More Realistic Measurement of
Consumer Expectations.**

The Intellicall Companies and NOSI concur with those commenters who continue to recommend the rate caps previously proposed by the Coalition on the basis that they more realistically measure consumer expectations.⁸ That rate ceiling alternative proposed a series of maximum end-user charges (based on the duration of the call) at or below which an OSP's rates will be presumed not unreasonable. These charges begin at \$3.75 for all call types except person-to-person calls, and increase to a maximum of \$7.00 for a nine-minute call; person-to-person calls are \$1.00 higher than all other call types. The proposed maximum rates are easy to apply. The proposal does not require application of time-of-day, distance, call type (except person-to-person), or other factors which may make monitoring, enforcement, or compliance costly or burdensome.

In contrast to the Commission's proposal, which very few commenters appear to support,⁹ the rate ceiling proposed by the Coalition remains today the most realistic approach to rate making should the Commission deem that necessary. Similarly, this is the only rate benchmark alternative that appears to have

⁸ See, e.g., Comments of U S West, Inc., at 3 (asserting that there is no clearer demonstration of the outer boundaries of customer "expectations" than the taking of affirmative action to complain about assessed charges).

⁹ See, e.g., Comments of Sprint; Comments of TRA.

wide support from all industry segments, as the record undoubtedly reflects.¹⁰

To identify the appropriate level for a rate ceiling, the Coalition examined a representative sampling of complaints to the Commission about operator service charges. The Coalition then devised a rate schedule which would ensure that all charges would be below those which prompted virtually all complaints in the sample. This methodology is fundamentally sound.

The Intellicall Companies' and NOSI's experience, as reflected in the number of FCC complaints filed collectively against them, strongly indicates that IOS's and NOSI's rates meet consumer expectations and, conversely, demonstrates that the Commission's perception of consumer expectations is wrong.

From January 1995 to August 1996, there have been only 24 consumer complaints concerning interstate OSP rates against the Intellicall Companies and NOSI in the aggregate. To put this in better perspective, the Intellicall Companies completed over 700,000 domestic interstate calls in 1995 alone, while NOSI completed over 800,000 domestic interstate calls, for a combined 1995 total of over 1.5 million completed domestic interstate calls. The total combined complaints for the Intellicall

¹⁰ See, e.g., Comments of Nynex; Comments of Bell Atlantic; Comments of APCC; Comments of CompTel; Comments of AT&T; Comments of US Long Distance, Inc.; Comments of the Intellicall Companies; Comments of Communications Central, Inc.

Companies and NOSI for 1995 is 19. Thus, for 1995, the ratio of consumer complaints to completed domestic interstate calls is roughly one (1) complaint per 79,000 completed interstate calls, or an incidence of complaint of roughly 0.000012%. The incidence of complaint for Intellicall and NOSI combined from January 1995 to August 1996 is even less, i.e., one (1) complaint per 93,750 calls, or roughly 0.000010%.¹¹

During this entire time, Intellicall's and NOSI's rates were higher than the Big Three rates individually or as a composite of the Big Three rates, and higher than the Commission's proposed benchmark of 15% above the composite rates. If indeed the Big Three rates (or their composite) realistically represent consumer expectations, one could have expected substantially more complaints registered against the Intellicall Companies and NOSI. The indisputable fact is that only 24 total consumer complaints were filed collectively against the Intellicall Companies and NOSI combined from 1995 to date, disproving the Commission's theory that consumers expect to pay only the Big Three rates or only 15% above these rates. The Intellicall Companies and NOSI believe that an examination of a

¹¹ In 1996 to date, Intellicall has a total of over 400,000 interstate calls. For the same period, NOSI has a total of over 350,000 calls. The total combined complaints for both is 5.

cross-section of most other OSP records of complaints would obtain a parallel result.¹²

Finally, customers can, and do, choose to pay charges which significantly exceed the Commission's proposed benchmarks, further demonstrating that the Commission's benchmarks do not reflect consumer expectations at all. Consumers expect that they will be paying more for calls placed away from home. They cannot reasonably expect the cheapest rates. For most of these callers, the convenience of being able to place a call anywhere there is a pay telephone compensates for higher ranges of charges.

B. THE RECORD COMPELS THE COMMISSION TO ADOPT A RATE BENCHMARK, ASSUMING ONE IS NECESSARY, THAT APPROPRIATELY TAKES INTO CONSIDERATION THE VARYING COST STRUCTURES OF COMPETITIVE OSPs.

A fair rate benchmark should accord providers the right to recover their costs of making the service available to the public. The rates should not be based on the rate levels or cost structures of any particular carrier, dominant or otherwise. Indeed, even AT&T, the "dominant" carrier who stands to benefit from the Commission's proposed rate benchmark, has expressly challenged the Commission's proposal on the basis that costs vary from carrier to carrier. The Intellicall Companies and NOSI unequivocally agree with AT&T, as do many of the commenters, that

¹² For example, U.S. Long Distance, Inc. claims that in 1995, it completed and successfully billed approximately 4.2 million interstate operator service calls, with an incidence of complaint of 0.001%. See Comments of U.S. Long Distance, Inc., at 6 n. 5.

any rate benchmark should take into account the differing cost structures of industry participants, dominant or nondominant, big or small. Only by incorporating these subtle (or not so subtle, in some cases) nuances into the benchmark methodology can the Commission arrive at a truly representative benchmark.

For example, the Big Three already have economies of scale that allow them to set prices that are generally lower than the majority of their nascent competitors in the operator services industry. Their historically large traffic volumes have enabled, and continue to enable, them to obtain billing, collection, and validation cost-efficiencies. These efficiencies derive from the Big Three's sheer size and longevity, none of which their OSP competitors have. Furthermore, it is simply a fact of life that the new OSPs generally have to pay more for shelf space¹³ than do AT&T, MCI, and Sprint, each of whom have an embedded base of 0+ customers. This embedded base of customers allows these carriers to spread the costs over a greater number of calls. Carriers like the Intellicall Companies and NOSI do not yet have the advantages of long-standing customer relationships, or an embedded base of 1+ customers over which to spread these costs. They are comparatively new entrants who must recover their costs on a stand-alone basis. And they must be allowed to do so.

¹³ By this Intellicall and NOSI mean contractual arrangements with owners of premises from where OSPs could provide telecommunications services.

Because these OSPs must start small, they cannot harness the efficiencies that inhere in having provided service for many years. In time, however, as these OSPs grow, they can begin to harness and benefit from these efficiencies which, ultimately, will be positively reflected in lower service rates. In the meantime, however, the Commission should not--and cannot--stop these OSPs cold in their tracks by holding them hostage to the same standards that apply to larger and more established IXC's. The Commission's policy has always been based on "pro-competition," not "pro-competitor." Forcing competitive OSPs to adopt the cost structures of "dominant" and highly entrenched competitors, which is an impossibility, confers undeserved competitive advantages upon these multi-billion dollar conglomerates.

C. **A RATE BENCHMARK THAT IS BASED ON THE BIG THREE RATES DOES NOT COMPORT WITH, AND CANNOT BE JUSTIFIED ON THE BASIS OF, THE PUBLIC INTEREST.**

The record strongly suggests that the Commission's proposed benchmark is contrary to the public interest for several reasons. First, the proposed benchmark is blatantly anticompetitive when viewed against the backdrop of the Commission's proposed rate disclosure requirements. Because the proposed benchmark is intrinsically tied to the Big Three rates, the Commission effectively guarantees, as CompTel suggests, that the Big Three will never be subject to any rate disclosure

requirements the Commission ultimate adopts.¹⁴ This is particularly troubling in light of the fact that these carriers have exhibited a willingness to increase their prices progressively in the past.¹⁵ A regulatory regime that permits the Big Three to increase their rates trilaterally, with little or no negative consequence, while putting a stranglehold on the rates the rest of the OSPs may charge, makes absolutely no sense.

Second, as the Intellicall Companies suggested in their initial comments, the Commission's proposed benchmark unreasonably confers a government-sanctioned competitive advantage upon the Big Three because the proposal would give these carriers *carte blanche* to dominate the operator services market through creative pricing schemes. For example, as Cleartel, ConQuest, and other commenters illustrate, the Big Three could reduce their rates significantly to artificially

¹⁴ See, e.g., Comments of CompTel, at 14 (noting that AT&T could raise its surcharge from \$2.25 to \$3.75 and still fall within the benchmark rate because its rate determines the benchmark); Joint Comments of Cleartel Communications and ConQuest Operator Services.

¹⁵ Some commenters have documented AT&T's past operator rate increases. US. Long Distance, Inc., for example, notes that AT&T's rates are approximately 34% greater today than they were in 1991. See Comments of U.S. Long Distance, Inc., at 13. Similarly, American Network Exchange, Inc. claims that since November 1994, AT&T has increased its set-up rates for automated calling card calls by 25%, its first-minute day rates from a range of \$0.21-0.34 to \$0.33-0.45, the set-up rates for billed-to-third-party-number calls by over 10%, and its set-up rates for person-to-person calls by over 25%. See Comments of American Network Exchange, Inc., at 4 n. 10.

force their competitors to either disclose their rates (and hence suffer the stigma) or lose money by pricing below cost.¹⁶

Third, the proposed alternative effectively destroys carrier initiative by potentially sacrificing quality and innovation over price. The Intellicall Companies and NOSI fully agree with several commenters who argue that the proposal would force conformity of rate structures and, as a result, possibly destroy innovative structures brought about by competition.¹⁷ Similarly, because the benchmark does not leave OSPs room for price maneuverability, some OSPs may well be forced to cut corners, at the expense of quality, in an attempt to stay within the benchmark.¹⁸ In either case, the rate benchmark asphyxiates competition to the detriment of all but the three largest OSPs and the consuming public.

Finally, the proposed benchmark would have the unintended effect of encouraging those OSPs whose rates exceed the benchmark to increase their rates even further on the theory that the incremental loss of goodwill is no worse than it already is. In other words, because they are already subject to a "kill"

¹⁶ See, e.g., Comments of Cleartel Communications and ConQuest Communications, at 9; Comments of U.S. Osiris Corporation, at 17. See also Comments of One Call Communications, Inc., at 5.

¹⁷ See, e.g., Comments of APCC, at 8; Comments of GTE, at 4.

¹⁸ See, e.g., Comments of Operator Services Company, at 7 (suggesting that a price cap could stifle future service enhancements or value-added features).

message, what more is there to lose by charging 25%, or even 50% more? For some OSPs, this may well be the only feasible recourse to quickly recoup as much of their potential loss as is possible before their inevitable demise.

D. RATE DISCLOSURES ARE AN INAPPROPRIATE ANSWER TO THE PROBLEM OF OPERATOR SERVICES RATE GOUGING.

The Commission's proposed solution to operator services rate gouging creates a regulatory "caste" system in which the "desirables," i.e., the Big Three, and the "untouchables," i.e., the remaining OSPs, are accorded disparate treatment. While the Commission may not have intended or contemplated *de jure* discrimination, *de facto* discrimination is nevertheless evident. Because the rate benchmark is unrealistically low even for the biggest OSPs outside of the Big Three, the effect would be to subject each and every OSP to a rate disclosure requirement, the stigma of which could potentially afflict the OSPs individually and as a group for the rest of their productive lives. It is a fact that consumers are creatures of habit. Once the consumers recognize that only the smaller OSPs appear to have "rate warnings" associated with them, the consumers will ultimately conclude, albeit wrongly, that these OSPs are "bad," and inevitably refuse to use their services. The situation would be extremely difficult to correct, and the smaller OSPs' reputation may be impossible to rehabilitate, even in the event their rates become comparable to the Big Three.

To the extent there remains a concern about unreasonable OSP rates, continued education provides a more appropriate long-term solution. The Intellicall Companies and NOSI agree with Communications Central, Inc. that the consumers are exercising their option to reach their carriers of choice-- consumers are dialing around the presubscribed OSPs more than ever before.¹⁹ The preponderance of 1-800 and similar dial-around advertisements, and mass media blitzes by the Big Three during, for example, the Super Bowl, also help disseminate the way that consumers who wish to reach their preferred carriers can do so conveniently from a payphone. This continuing education of consumers on their calling options will assure that OSPs who charge egregious prices today will become extinct unable to sustain consumer patronage.²⁰

E. THE RECORD DEMONSTRATES THAT EXACT RATE DISCLOSURE IS INFEASIBLE FROM STORE-AND-FORWARD PAYPHONES, AND PROHIBITIVELY COSTLY FROM OTHER PHONES.

The record overwhelmingly supports the Intellicall Companies' and NOSI's assertion that the Commission's exact rate disclosure proposal is both technically infeasible and

¹⁹ See Comments of Communications Central, Inc., at 6.

²⁰ See generally Joint Comments of Bell Atlantic, Nynex, and BellSouth, at 5 (problem of OSP overcharging should diminish over time, as OSPs continue to introduce and advertise dial-around access). Indeed, the media have also recently played a part in educating the consumers by publishing editorials and news articles on providers who allegedly overcharge.

prohibitively costly to implement.²¹ BellSouth, Bell Atlantic, and Nynex collectively indicate that "the cost to buy and install the hardware and software necessary for all OSPs to provide price disclosure messages would not be insignificant."²² MCI asserts that "all calls may have to be sent to a live operator, in the near term, in order to disclose the rates for a call," adding \$0.40 cents per call to the cost.²³ Several other OSPs echo this sentiment, arguing further that any such disclosure would be confusing and disruptive and, in any event, would bring about significant call delays.²⁴

²¹ OSPs would have to maintain their own rating structures, as well as the 528 rating permutations that the Commission proposed, in order to first calculate the rate for the call, and then compare the result with the Commission's benchmark to determine whether or not the rate is outside the benchmark necessitating some type of rate announcement.

²² Joint Comments of Bell Atlantic, BellSouth, and Nynex, at 4.

²³ Comments of MCI, at 3-4.

²⁴ See, e.g., Comments of Cleartel Communications and ConQuest, at 12-13 (real-time disclosure would be difficult to develop and implement in light of wide variations in OSP rate levels and structures; disclosure would be technically difficult and costly for all); U S West, at 5 (any type of price/rate disclosure would require either additional systems investment by carriers, if disclosure were mechanized, or labor expense, if live operators were required); Comments of American Network Exchange, at 8 (on automated operator-assisted calls, affected OSPs would either have to redirect or calls to a live person to obtain the call information and determine the applicable rates, or to develop an automated real-time rating system); Southwestern Bell, at 3 (many LECs do not possess the technology for real-time rating of 0+ calls, considerable costs would be incurred for such development and deployment). One commenter, Operator Services Company, claims that although additional software modifications would be necessary to implement the audible rate quote, the costs of such implementation will not be unreasonably or unduly burdensome. See Comments of Operator Services Company, at 4. Because this

Continued on following page

Moreover, several commenters bolster the Intellicall Companies' and NOSI's claim that rate disclosure on some phones, particularly store-and-forward payphones, would be technically infeasible, necessitating forced retirement of existing equipment. U. S. Osiris Corporation asserts that its embedded base equipment is not capable of providing rates on a real-time basis, and that in order to implement real-time rate quotes on all calls, site equipment would have to be replaced or calls would need to be routed to an operator center where a data base could be used to retrieve the rating information.²⁵ APCC recognizes that equipment modification to deliver a price disclosure message presents special problems for operator services delivered by store-and-forward technology.²⁶ Similarly, GTE suggests that its current mechanized equipment, costing approximately \$22 million in 1993, would most likely require a complete replacement to permit rate quotes prior to call connection.²⁷

NAAG recommends that "OSPs be required to disclose their rates in a two-part message," in which the OSPs must

Continued from previous page

lone comment is belied by numerous comments to the contrary and, further, the factual assertion was not supported by a written declaration, the assertion is highly suspect and should not be given weight.

²⁵ Comments of U.S. Osiris Corporation, at 13.

²⁶ Comments of APCC, at 4.

²⁷ Comments of GTE, at 7.

disclose all charges for the first and subsequent minutes, including operator-handling charges, commissions, etc.²⁸ Although NAAG's proposal would be "universally" applicable to all OSPs, and in that regard avoids the negative stigma inherent in the Commission's original proposal, nevertheless the proposal suffers from some other infirmity. To be sure, software must still be developed to accommodate the real-time rating mechanisms. Hardware must still be reconfigured. Embedded store-and-forward and similar equipment must still be replaced. At bottom, the NAAG's proposal approach is no better than the Commission's original proposal. There is no record support for this alternative and, consequently, the Commission must reject it summarily.

It is manifest from the record that the rate disclosure requirement, at a minimum, would cost substantial cash outlays and untold hardships. At worst, the disclosure requirement would render useless millions of dollars of embedded equipment and force equipment manufacturer to redesign their products. The evidence in this proceeding compels the Commission to reject its proposed exact rate disclosure proposal.

²⁸ See Comments of the National Association of Attorneys General, at 7.

**F. TO THE EXTENT THE COMMISSION FEELS COMPELLED TO REQUIRE
SOME TYPE OF RATE DISCLOSURE, THE COMMISSION SHOULD
ADOPT MORE TECHNICALLY FEASIBLE AND LESS COSTLY
DISCLOSURE ALTERNATIVES.**

In their initial comments, the Intellicall Companies suggested that the Commission adopt instead a number of alternatives if it feels compelled to impose some type of rate disclosure requirements: disclosure of the highest amount for a seven-minute call, disclosure of the average rate for a seven-minute call, disclosure of the average per-minute price for classes of calls, disclosure of the maximum rates for initial minutes and subsequent minutes of use for classes of calls, and a general above-benchmark rate announcement. The Intellicall Companies and NOSI believe that these disclosure alternatives are more practical and easier to implement than the proposed exact rate disclosure requirement. Although the costs of implementation would not be insubstantial, these alternatives provide a unique benefit in that existing equipment need not be replaced.

APCC concurs with the Intellicall Companies and NOSI that the Commission should allow store-and-forward payphones to disclose an average price or maximum price, rather than the exact price applicable to the call.²⁹ Cleartel's and ConQuest's proposal that a message inform caller of an available 800 number

²⁹ See Comments of APCC, at 5.

to receive specific rate information, similar to that proposed by the Intellicall Companies, is also perhaps workable.

Finally, the Intellicall Companies and NOSI reiterates the Intellicall Companies' initial position here that regardless of the alternatives chosen, the OSPs should have the discretion to choose from among the alternatives in order to fit their unique needs and capabilities. More importantly, because some solutions are best suited for certain call types, OSPs should not be precluded from implementing different disclosure alternatives for different call types, nor from changing from one alternative to another, so long as the Commission's consumer concerns are fully addressed. For example, an OSP should be allowed to use a maximum-rate announcement for collect calls, while permitting it to use a general rate availability announcement for all other types of calls. U S West, Bell Atlantic, Nynex, and BellSouth recognize, as do the Intellicall Companies and NOSI, that carriers may well desire flexibility in the kind of disclosures they ultimately may be required to make.³⁰

The Intellicall Companies and NOSI challenge as unworkable TRA's suggestion that the Commission require OSPs whose rates exceed the established benchmark for any one of the 528 permutations of OSP calls identified by the Commission to "announce at the beginning of the call the percentage by which

³⁰ See Comments of U S West, at 7; Joint Comments of Bell Atlantic, Nynex, and BellSouth, at 7.